

Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 05.01.2023

DELIVERED ON: 05.01.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.2027 of 2022

with

I.A. No.CAN 1 of 2022

M/s. Gayatri Projects Limited & anr.

Vs.

**The Assistant Commissioner of State Tax,
Durgapur Charge & Ors.**

Appearance:-

Mr. Ankit Kanodia,

Ms. Megha Agarwal,

Ms. Payal Shaw

...

for the appellants.

Mr. T. M. Siddique, Id. A.G.P.,

Mr. Debasish Ghosh,

Mr. Nilotpall Chatterjee,

Mr. Varun Kothari

....

for the State.

Mr. Rajeev Kumar Agarwal

...

for the respondent no.4

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal by the writ petitioners is directed against an order dated 18th November, 2022 in W.P.A. No.22731 of 2022 by which the learned Single Bench declined to grant any interim order till the disposal of the writ petition and directed affidavits to be filed. Aggrieved by the same, the appellants are before us by way of this appeal.

2. We have heard Mr. Ankit Kanodia, learned Advocate appearing for the appellants, Mr. Debasish Ghosh, learned Government Advocate appearing for the State and Mr. Rajeev Agarwal, learned Advocate appearing for the respondent no.4.

3. With the consent of the learned Advocates appearing on either side, the writ petition itself is taken up for disposal along with this appeal.

4. The order impugned in the writ petition was passed by the West Bengal Authority for Advance Ruling Goods and Services Tax, Kolkata dated 9th August, 2021. By the said order, the authority held that the applicant, namely, Eastern Coalfields Limited, the 4th respondent herein, is not entitled for input tax credit claimed by them on the invoices raised by the appellants pertaining to the period January, 2020, February, 2020 and March, 2020 for which the supplier had furnished Form GSTR 1 and GSTR 3B in the month of November, 2020 and therefore, the 4th

respondent / Eastern Coalfields Limited was required to reverse the said input tax credit. Though the input tax credit claimed by the 4th respondent pertained to the invoices raised by the appellants, the appellants were not heard by the authority as they were not made parties to the said application. The appellants filed the writ petition contending that the non-payment of the GST amount charged by the 4th respondent to the appellants is violative of Article 19(1)(g) and 300A of the Constitution of India and against the provisions of the CGST and WBGST Act, 2017.

5. It was contended that the authority's decision has been made with the finding of fact that excess credit had been availed without determining the credit available based on uploaded invoices; 10% statutory limit to be computed thereon to avail credit in respect of invoices not uploaded; quantum of credit availed by the 4th respondent in respect of invoices not uploaded and if such quantum was within or breached such 10% statutory limit. It was further contended by the appellants that the 4th respondent did not prefer any appeal against the said order passed by the authority by approaching the appellate authority for advance ruling as provided under Section 100 of the Act. It was further contended that the 4th respondent did

not place the correct facts before the authority about the quantum of credit availed on the basis of uploaded invoices, 10% limit to be computed thereupon and if the credit availed from the appellants' invoices breached the aforesaid limit for it to be adjudicated as "excess credit" by the authority. Therefore, it was contended that the facts placed before the authority were incomplete and insufficient.

6. The appellants would further contend that they were unaware of the fact that the 4th respondent had approached the authority for an advance ruling and were informed by the 4th respondent only after the order was passed by the authority and even thereafter though the appellants had made a request to the 4th respondent to prefer an appeal to the appellate authority, such request was not considered by the 4th respondent and all these factors necessitated the appellants to approach the writ Court.

7. Chapter XVII of the CGST Act deals with advance ruling. Section 95(c) of the Act defines applicant to mean any person registered or desirous of obtaining registration under the Act. Undoubtedly, the appellants being registered dealers under the provisions of the Act could be an applicant as defined under Section 95(c) of the Act. Nevertheless, the applicant before the authority was the 4th respondent / Eastern Coalfields

Limited. In terms of Section 100, an appeal is provided to the appellate authority and such appeal can be preferred in terms of sub-Section (1) of Section 100 by the concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under Sub-Section (4) of Section 98.

8. Undoubtedly, the appellants are aggrieved persons against the advance ruling. The 4th respondent having not preferred an appeal, such conduct of the 4th respondent cannot prejudice the rights of the appellants. Admittedly, the invoices, which were subject matter of consideration by the authority were the invoices raised by the appellants. Therefore, the appellants should have been put on notice by the authority or in other words, the 4th respondent ought to have impleaded the appellants in the proceedings before the authority.

9. Thus, we are of the view that the appellants cannot be non-suited by virtue of an order, which was passed by the authority without hearing them. Therefore, we are of the view that the appellants should not be left remediless. Though it is submitted by the learned Government Advocate appearing for the State that appeal has been provided to the appellate authority and if the appellants qualify the definition of an aggrieved person, they could very well approach the appellate authority.

In our view, since the appellants have contended that sufficient factual details were not placed before the authority, directing the appellants to prefer an appeal to the appellate authority may not be effective since the facts, which the appellants seek to bring on record were not part of the records before the original authority.

10. Therefore, we are of the view that the matter has to be re-examined by the authority themselves instead of directing the appellants to approach the appellate authority. In the result, appeal as well as the writ petition are allowed and the order passed by the 5th respondent dated 9th August, 2021 in order no.07/WBAAR/2021-22 is set aside and the matter is remanded back to the 5th respondent for fresh consideration. The 5th respondent is directed to issue notice to the appellants as well as the 4th respondent, hear the parties afresh, permit the appellants to submit documents as well as written submissions and thereafter fresh orders be passed on merits and in accordance with law.

11. The above directions shall be complied with by the 5th respondent as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of the server copy of this order.

12. We make it clear that we have not gone into the merits of the matter and it is for the 5th respondent to take a reasoned decision on the facts placed before it.

13. There shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)